

1 **LEWIS BRISBOIS BISGAARD WILSON, ELSER, MOSKOWITZ,  
& SMITH LLP EDELMAN & DECKER**

2 Julian J. Pardini, Esq. John T. Burnite, Esq.  
SBN 133878 SBN 162223  
3 Stephen J. Liberatore, Esq. 525 Market Street, 17<sup>th</sup> Floor  
SBN 129772 San Francisco, CA 04105  
4 333 Bush Street, Suite 1100 Tel.: (415) 433-0990  
San Francisco, CA 94104 Fax: (415) 434-1370  
5 Tel: (415) 362-2580  
Fax: (415) 434-0882

6 Attorneys for Plaintiff/Counter-defendant  
7 NATIONWIDE MUTUAL INSURANCE COMPANY

8 **LAW OFFICES OF JOHN C. Marcus Daniel Merchasin, Esq.  
MCCASLIN SBN 55927**

9 John C. McCaslin, Esq. Attorney and Counselor at Law  
SBN 204983 582 Market Street, Suite 1400  
10 P.O. Box 160023 San Francisco, CA 94104  
Sacramento, CA 95816 Tel.: (415) 678-2700  
11 Tel.: (916) 200-8455 Fax: (415) 520-0426  
Fax: (916) 864-1430

12 Attorneys for Defendants/Counter-claimants  
13 DONALD V. RYAN and BARBARA RYAN

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16  
17 NATIONWIDE MUTUAL INSURANCE Case No. 3:12-CV-5000-JST  
COMPANY,  
18 Plaintiff,  
19 v.  
20 DONALD V. RYAN, an individual, and  
21 DOES 1 through 10,  
22 Defendants.

**STIPULATION and [PROPOSED] ORDER  
re: REQUESTED REVISIONS TO  
COURT'S SCHEDULING ORDER**

23  
24 AND RELATED COUNTER-CLAIM

25  
26 Plaintiff NATIONWIDE MUTUAL INSURANCE COMPANY (hereinafter "Nationwide")  
and Defendants DONALD V. RYAN, BARBARA RYAN and MICHAEL RYAN ("the Ryans"),  
27 and collectively referred to hereinafter as "the Parties," by and through their respective counsel,  
28

hereby stipulate as follows:

## **RECITALS**

1. The Parties, by and through their respective counsel, attended the initial case management conference on January 17, 2013, the Honorable William Alsup, Judge, presiding. As a result of that conference, the Court issued the following scheduling order:

- January 22, 2013: Last day to make initial disclosures
  - February 28, 2013: Last day to add new parties or amend pleadings
  - October 25, 2013: Last day to serve list of issues on which expert testimony will be offered
  - November 22, 2013: Non-expert discovery cut-off
  - November 22, 2013: Last day for disclosure of experts and expert reports
  - December 6, 2013: Last day to submit rebuttal expert reports
  - December 13, 2013: Last day to submit expert reply reports
  - December 19, 2013: Last day to file motions for summary judgment
  - December 27, 2013: Expert discovery cut-off
  - February 10, 2014: Final Pre-Trial Conference
  - February 18, 2014: Trial (by jury)

18        2.     In reliance on the above-referenced scheduling order, the Parties postponed various  
19 discovery efforts while they pursued and prepared for private mediation. That mediation took  
20 place on April 30, 2013, with Vivien Williamson acting as mediator; the case did not settle. Since  
21 that time, the Parties, by and through their respective counsel, have been cooperating in the effort  
22 to set dates for the depositions of the Parties and percipient witnesses; some written discovery has  
23 been propounded and further written discovery is anticipated, particularly in follow-up to the  
24 depositions that will be taken. The effort to set deposition dates has taken into account the  
25 summer holiday season as well as the professional calendars of counsel and the Parties are certain  
26 that necessary depositions will be accomplished by the non-expert discovery cut-off date  
27 originally set by the Court.

11

1           3. On Friday, July 5, 2013, counsel for the Parties received the Court's electronically-  
 2 sent minute order vacating the case management conference that had been scheduled for July 10  
 3 and noting that the Court had already set "appropriate deadlines" in the case.

4           4. On Monday, July 8, at 9:40 a.m., counsel for the Parties received the Court's  
 5 electronically-sent minute order confirming the dates set for non-expert discovery cut-off  
 6 (November 22), disclosure of expert witnesses (November 22), the deadline for filing motions for  
 7 summary judgment (December 19) and trial (February 18, 2014). The Court set a date of  
 8 January 28, 2014, for the submission of a proposed pretrial order and changed the date for the final  
 9 pre-trial conference to February 7, 2014.

10          5. Then, later on Monday, July 8, at 1:13 p.m., counsel for the Parties received the  
 11 Court's electronically-sent minute order that revised the scheduling order as follows:

- 12           •       August 16, 2013:      Non-expert discovery cut-off
- 13           •       September 20, 2013:   Last day for disclosure of experts and expert reports
- 14           •       October 4, 2013:     Last day to submit rebuttal expert reports
- 15           •       October 18, 2013:    Expert discovery cut-off
- 16           •       November 8, 2013:   Last day to file motions for summary judgment
- 17           •       January 21, 2014:    Last day to submit proposed pretrial order
- 18           •       January 31, 2014:    Final Pre-Trial Conference
- 19           •       February 18-20, 2014: Trial (by jury).

20          6. On Tuesday, July 9, counsel for Nationwide, with the approval of counsel for the  
 21 Ryans, placed a telephone call to Judge Tigar's clerk, William Noble, who confirmed that the  
 22 second order issued on July 8 was not in error, but reflected the Judge Tigar's conclusion that  
 23 certain dates previously set did not accommodate his calendar.

24          7. The Parties, by and through their respective counsel, had relied on the deadlines  
 25 originally set by the Court and the new deadlines, particularly those made effective during the next  
 26 60 to 90 days present a hardship for the Parties, and for that reason, the Parties present the Court  
 27 with this Stipulation and Proposed Order.

28          ///

1 NOW, THEREFORE, the Parties, by and through their respective counsel of record, do  
2 hereby stipulate as follows as request that the Court issue an order in accordance therewith:

3 **STIPULATION**

4 1. The Parties, by and through their respective counsel request that the Court issue a  
5 new scheduling order as follows:

- 6 • September 30, 2013: Non-expert discovery cut-off
- 7 • September 30, 2013: Last day for disclosure of experts and expert reports
- 8 • October 15, 2013: Last day to submit rebuttal expert reports
- 9 • October 31, 2013: Expert discovery cut-off
- 10 • November 27, 2013: Last day to file motions for summary judgment
- 11 • January 21, 2014: Last day to submit proposed pretrial order
- 12 • January 31, 2014: Final Pre-Trial Conference
- 13 • February 18-20, 2014: Trial (by jury).

14 2. If the Court is unable to accommodate the Parties' requested revisions to the  
15 scheduling order, the Parties request that the Court re-schedule a case management conference so  
16 that other adjustments may be made in the scheduling order.

17 Respectfully submitted,

18 DATED: July 9, 2013 LEWIS BRISBOIS BISGAARD & SMITH LLP

19 By: /s/ Stephen J. Liberatore

20 Julian J. Pardini

21 Stephen J. Liberatore

22 Attorneys for Plaintiff/Counter-defendant  
NATIONWIDE MUTUAL INSURANCE COMPANY

23 DATED: July 9, 2013 WILSON, ELSER, MOSKOWITZ, EDELMAN & DECKER

25 By: /s/ John T. Burnite

26 John T. Burnite

27 Attorneys for Plaintiff/Counter-defendant

28 NATIONWIDE MUTUAL INSURANCE COMPANY

1 DATED: July 9, 2013

LAW OFFICES OF JOHN C. MCCASLIN

2 By: /s/ John C. McCaslin

3 John C. McCaslin  
4 Attorney for Defendant  
5 DONALD V. RYAN

6 DATED: July 9, 2013

7 By: /s/ Marcus Daniel Merchasin

8 Marcus Daniel Merchasin  
Attorney for Defendant  
DONALD V. RYAN

9

10 **ORDER**

11 Based on the foregoing stipulation of the Parties and their proposed revisions to the  
12 Court's scheduling order, and finding good cause therefor,

13 **THE COURT HEREBY ORDERS AND DECREES** that the Court's order be and  
14 hereby is, **REVISED** to reflect the dates stipulated to by the Parties, as follows:

- 15 • September 30, 2013: Non-expert discovery cut-off  
16 • September 30, 2013: Last day for disclosure of experts and expert reports  
17 • October 15, 2013: Last day to submit rebuttal expert reports  
18 • October 31, 2013: Expert discovery cut-off  
19 • November 27, 2013: Last day to file motions for summary judgment  
20 • January 21, 2014: Last day to submit proposed pretrial order  
21 • January 31, 2014: Final Pre-Trial Conference  
22 • February 18-20, 2014: Trial (by jury)

23 IT IS SO ORDERED.

24 DATED: July 10, 2013

25   
26 John S. Tigar, United States District Judge  
27 United States District Court  
28 Northern District of California